

37 Am. Jur. 2d Fraud and Deceit § 23

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Fraud and Deceit

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II. Elements and Requisites

A. Basis of Action

2. Essential Elements of Action

§ 23. Action for deceit

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1 to 7, 26

The essential elements required to sustain an action for deceit are that a representation was made as a statement of fact, which was untrue and known to be untrue by the party making it, or else recklessly made; that it was made with intent to deceive and for the purpose of inducing the other party to act upon it; and that the other party did in fact rely on it and was induced thereby to act to his or her injury or damage.¹ To sustain a cause of action based on deceit, the defendant must have made a false representation to the person defrauded.² A tort action for deceit requires showing an intent to deceive or scienter, which are heavy burdens of proof.³

Observation:

Under the formulation of the rule as stated in the Restatement Second of Torts, one who fraudulently makes a misrepresentation of fact, opinion, intention, or law for the purpose of inducing another to act or to refrain from action in reliance upon it is subject to liability to the other in deceit for pecuniary loss caused to him or her by his or her justifiable reliance upon the misrepresentation.⁴

The deceit statute in some jurisdiction provides a cause of action for plaintiffs who have been “willfully deceive[d]” by another and who have altered their positions based on the deceit.⁵

Footnotes

- ¹ Charpentier v. Los Angeles Rams Football Co., Inc., 75 Cal. App. 4th 301, 89 Cal. Rptr. 2d 115 (4th Dist. 1999); Shrives v. Talbot, 91 Idaho 338, 421 P.2d 133 (1966); Jo Ann Homes at Bellmore, Inc. v. Dworetz, 25 N.Y.2d 112, 302 N.Y.S.2d 799, 250 N.E.2d 214 (1969); North American Truck & Trailer, Inc. v. M.C.I. Communication Services, Inc., 2008 SD 45, 751 N.W.2d 710 (S.D. 2008).
- ² Gourdine v. Crews, 405 Md. 722, 955 A.2d 769 (2008).
- ³ Media Network, Inc. v. Long Haymes Carr, Inc., 197 N.C. App. 433, 678 S.E.2d 671 (2009).
- ⁴ Restatement Second, Torts § 525.
LHC Nashua Partnership, Ltd. v. PDNED Sagamore Nashua, L.L.C., 659 F.3d 450 (5th Cir. 2011).
- ⁵ Kent v. United of Omaha Life Ins. Co., 484 F.3d 988 (8th Cir. 2007) (applying South Dakota law).

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